The way the claim about the $1,800 is put by the husband is that the original credit of $1,800 was created in pursuance of a contract between the parties that the wife should go to Australia and the wife did not go there. There is, therefore, either a breach of contract or a frustration. The action of the husband in inducing the Bank to transfer the credit to the wife's account in Singapore amounted therefore to a fresh payment. I am unable to see it in that light. I cannot find that there was a contract. On the other hand, I do not think that it would be reasonable to treat the payment as a mere gift. If the wife had escaped to Australia I think that the husband would have been entitled to set off this sum against further payments which might have become due. I now find that a position of great difficulty arises. At the moment when the wife became a resident in enemy occupied territory the husband had paid more than he was obliged to pay by his covenant. Is the husband entitled to credit this sum against payments due for the period after the wife ceased to live in enemy occupied territory? If it had merely been a question of the local moratorium I do not think that there would have been any difficulty. The payment would have been for the period covered by the moratorium and not for the later period.

The other question arising out of the enemy occupation is more difficult. As I have said, it seems settled that the deed was abrogated when the Japanese occupied Sourabaya. The husband, greatly to his credit, has not chosen to plead this point. I have considered whether, in spite of the fact that it is not pleaded, I should not have decided the case on this ground. However, since hostilities are now over and the wife was never at any time an enemy except as a consequence of her involuntary residence in Java, I think that the question of public policy is not so pressing that I should declare the deed abrogated when the husband decides to treat it as valid. I consider that the consequence of his electing to treat it as valid is that the payments made before the fall of Sourabaya must be considered as referable to the period immediately following payment.

As regards the clothing, it is clear that the husband did something that was beyond the scope of the agreement. It also appears that this was done at the request of the wife. I think that the action of the husband must be construed with reference to his obligations under the covenant and that he is entitled to set off his expenditure against what is due under the covenant. To ascertain this, unless the parties can agree, there must be an enquiry by the Registrar. A point was taken, although not pleaded, about the date of the moratorium. This appears to me the date from a day in August 1945 and so does not affect the amount claimed. There must be judgment for the wife for the amount claimed less what the Registrar finds expended on clothing, with costs.

Order Accordingly.

LAU TECK SOON vs. REX.

[App. Crim. Juris. (Brown, J.) January 24, 1947]

Price Control Proclamation, Section 4A (1) (iii)—Prohibition of Export (Textiles) (No. 2) Order, 1946—Power to make rules to prohibit export of textiles—Order made is ultra vires the Section.

In this case the accused was convicted of contravening Section 3 of the Prohibition of Export (Textiles) No. 2 Order 1946 (Gazette Notification No. S. 114 of 1946) which provided that "The export of any length of any controlled textile in excess of ten yards is hereby prohibited except with the written permission of an Assistant Price Controller." This Order purported to be made by the Deputy Price Controller in exercise of the powers conferred upon him by Section 4A (1) (iii) of the Price Control Proclamation which gives power to a Deputy Price Controller to "prohibit or control the export of any controlled article to any specified area."

Held, that the Prohibition of Export (Textiles) (No. 2) Order, 1946 is **ultra vires** Section 4A (1) (iii) of the Price Control Proclamation as no areas were specified and it was in effect a general prohibition of exports.

MAGISTRATE'S APPEAL.

MARK MORRISON for the appellant.

A. W. BELLAMY for the respondent.

Brown, J. in an oral judgment said:—This was originally an appeal against sentence only from a conviction by the learned Magistrate upon a plea of guilty. But Mr. Morrison applied for extension of time within which to appeal against the conviction, which I granted.

The appellant was convicted of contravening section 3 of the Prohibition of Export (Textiles) (No. 2) Order, 1946. That Order purports to be made by the Deputy Price Controller in the exercise of the powers conferred upon him by section 4A (1) (iii) of the Price Control Proclamation, which gives power to a Deputy Price Controller to:—

> (iii) prohibit or control the export of any controlled article to any specified area:

It is clear that this power requires a Deptuy Price Controller to specify the area or areas to which the export of textiles is to be controlled or prohibited. And in granting this power to the Deputy Price Controller the legislating authority insisted that that official should not have a general power but that he should be required to specify the areas to which the prohibition or control of export applies. It would be possible for him to specify any number of areas. But specify he must, so that the public may know the specific areas which have been considered and to which the export order applies.

It is clear that in the Order under which the appellant was convicted no areas were specified and that there was a general prohibition of exports. In my opinion this is *ultra vires* section 4A (i) (iii) of the Price Control Proclamation and the appeal must be allowed.

Appeal Allowed.

ARUMUGAM AND ANOTHER v. REX.

[App. Crim. Juris. (Worley, J.) November 16, 1946]

Food Control Proclamation (No. 10 of 1945) Section 15—Foodstuffs Movement Restriction Order (Food Control No. 11 Order) Section 2—Food Control Order No. 13 Order—Appeal on question of fact—Failure to distinguish between defence of persons accused together—Defence of mistake of fact under Section 79 of the Penal Code—Criminal Procedure Code.

The two appellants and another accused person were all members of the police force stationed at Joo Chiat Police Station. On the 9th of June 1946 at 2.30 a.m. they were driving a truck belonging to Joo Chiat Police Station along a road from the sea in the direction of the Police Station. They were eventually charged and convicted on two charges (1) that they had in their possession a controlled article in such circumstances as to raise a reasonable suspicion that an offence under the Food Control Proclamation had been committed or was intended to be committed, an offence under Section 15 of the Food Control Proclamation and (2) that they did move a controlled article without a permit from the Assistant Food Controller, an offence under Section 2 of the Foodstuffs Movement Restriction Order of 1945. It appeared that the third person was the senior of the three Police Officers. He was a detective. The first appellant was an acting detective and the second appellant was merely a driver. The 1st and 2nd appellants alleged that they had acted the whole time under the orders of the third person. The learned District Judge convicted all the accused on both the charges against them and in his grounds of judgment said inter alia "Whatever the value of each separate item of evidence in favour of the accused, the cumulative effect, to my mind, told against them. I therefore convicted the first accused. It follows, therefore, that I must convict the other accused." The first and second appellants, who were the second and third accused in the lower Court, appealed against their conviction and sentence.

Held, (1) that where the evidence discloses a specific offence under the Food Control Proclamation, that offence should be charged and that Section 15, which is intended to cover cases of preparation or where the circumstances are merely suspicious but are not sufficient to prove precisely any specific offence, can only be used as an alternative charge to a charge of another offence under the Food Control Proclamation but not as an additional charge;

(2) that in this case, the conviction under Section 15 of the Food Control Proclamation must be quashed;

(3) that there was no evidence to show that the controlled article was moved from one area to another and therefore the second charge and the conviction thereon should be under the Food Control No. 13 Order and not under the Foodstuffs Movement Restriction Order of 1945;

(4) that in an appeal on a question of fact the appellant has to satisfy the appellate Court that the judgment was against the weight of the evidence;

(5) that there was evidence in this case to show that the second and third accused were acting under the instructions of the third person and that they were acting under a mistake of fact, which was a defence under Section 79 of the Penal Code;

(6) that the learned District Judge had on this point failed to appreciate that the first and second appellants had a separate and distinct defence from that of the third person and that therefore the conviction of the two appellants on the second charge must be quashed.

Cases referred to :—

(1) *Rex v. Ramasamy* (1930) S.S.L.R. 104.

(2) *The Empress of India v. Dayadin* I.L.R. 4 All. 148.

(3) *Sheo Swarup and others v. The King Emperor* (1934) A.I.R. P.C. 227.

(4) *Ong Joo Chin v. Rex* (1946) 12 M.L.J. 1.

MAGISTRATE'S APPEAL.

Mark Morrison for the appellants.

A. W. Bellamy for the Crown.

Worley, J. in an oral judgment said :—In this appeal I had intended to write a judgment but I have not had time to do so. The position is that the two appellants together with a third person who has not appealed were charged and convicted before the Second District Court on two charges, firstly, that they had in their possession at 2.30 a.m. on the 9th of June this year a controlled article namely approximately 4,200 katties of rice, in such circumstances as to raise a reasonable suspicion that an offence under the Food Control Proclamation had been committed or was intended to be committed. That was a charge under section 15 of the Food